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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BH/LSC/2013/0435**

Property : **35 Chingford Road London E17 4PW**

Applicant : **Dalkator Limited**

Representative : **Circle Residential Management Limited**

Respondent : **Mr N Mandra**

Representative : **In Person**

Type of Application : **Liability to pay service charges and Variation of lease**

Tribunal Members : **Judge P Leighton LLB
Mr N Martindale FRICS**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **12/9/2013**

DECISION

Decisions of the Tribunal

- (1) The tribunal determines that the sum of £840.74 is payable by the Respondent in respect of the estimated service charges for the year 2013 year in respect of insurance premium for the two flats at the property 35 Chingford Road Walthamstow London E17 4PW .(the property”)
- (2) The Tribunal makes no order on the application to vary the leases of the property

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges in respect of the service charge year 2013/14 in respect of two flats at 35 Chingford Road London E17 4PW(“the property”). The Applicant further seeks a variation of the leases of each of the flats in relation to the liability for insurance pursuant to Part IV of the Landlord and Tenant Act 1987(“the 1987 Act”)
2. Directions were given by the tribunal on 2nd July 2013 and the matter was ordered to be determined on the basis of the papers submitted and it came before the tribunal on 19th August .2013. Written submissions were received from the landlord but no evidence was submitted by the tenant
2. The relevant legal provisions are set out in the Appendix to this decision.

The Background

3. The property which is the subject of this application is a terraced house converted into two self contained flats in a residential street in Walthamstow. The Respondent is the leasehold owner of both flats.
4. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Applicant is the freehold owner of the property and the Respondent holds a long lease of both flats at the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge as set out in clause .1(j) and the landlord is required to insure the

“demised premises “ under Clause 3 The specific provisions of the lease will be referred to below, where appropriate

The Issues

6. There are two issues for the tribunal to determine as follows:-

(a) Insurance premium for the ground floor flat in the sum of £420.37 for year 2013/14; and an insurance premium of £420.37 for the first floor flat.

(b) An application to vary the leases of each of the flats in order to make separate provision for the insurance payments.

Liability for insurance premium

7. At the end of clause 1 (J) of the lease it is provided: – *"yielding and paying all the on demand by way of further rent a yearly sum equal to the sum or sums which the lessor shall from time to time pay by way of premium including any increased premium payable by reason of any act or omission of the lease (sic) for keeping the demised premises insured against loss or damage by fire explosion or aircraft the said further rent to be paid once a year on the said 24th day of June in each year."*
8. In clause 3 (b) of the lease the landlord covenants to insure the property and to keep it insured as required above.
9. The evidence submitted on behalf of the landlord upon acquisition of the freehold by the applicant in 2010 the building was insured for a sum of £250,000. It is currently insured in the sum of £320,090. In order to finance the cost of the buildings insurance premium credit is used. It is also asserted that the landlord receives no commission for placing the insurance.
10. In its submission is the landlord refers to the decision of **Forceful v- Sweetman (2001) and Berrycroft Management Company limited the Sinclair Gardens investments (Kensington) Ltd 1987** as indicating that the landlord is not required to train the cheapest possible insurance provided proper steps have been taken to test the market and the premium and obtained his within a margin of reasonableness.
11. As no contrary evidence has been submitted on behalf of the tenant the tribunal is unable to say that the premium charged in this case is excessive, although some question arises as to whether it was necessary to employ premium credit in order to pay for a relatively small sum by way of insurance when the tenant is required to pay the full amount in advance.

12. In the circumstances the tribunal determines that the sum of £420.37 is recoverable in respect of each of the flats.

Variation of lease

13. The tribunal declines to grant the variation requested by the applicant.

Reasons for the Tribunal's decision

14. The applicant seeks a variation of clause 1 (j) and clause 3 (b) in order to require that each of the leaseholders shall meet half the cost of insuring the building. The effect of the variation would be to remove the reference to "the demised premises" and substitute the word "building" and to require under clause 1 (J) each leaseholder to meet half the cost of that insurance
15. The reasoning behind the amendment is contained in advice received from the landlord's insurance broker the effect of which is set out in clause 10 of the landlord submissions and is based on the assumption that it would be preferable for the insurance of the building to be placed with one insurer, whereas the present lease permit each of the leaseholders to place the insurance with a separate insurer which could give rise to a potential conflict in the event of a claim relating to a common part of the property such as the roof.
16. Section 35 of the 1987 Act states as follows: –
17. (1) Any party to a long lease of a flat may make an application to the court for an order varying the lease in such manner as is specified in the application
- (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters namely
- (b) The insurance of the building containing the flat or of any such land all building as is mentioned in paragraph (a)
18. The tribunal accepts that the amendment which is proposed is sensible and would amount to an improvement of the lease. However it is not possible to state that the current lease "failed to make satisfactory provision" since the current arrangements can be operated without any legal hindrance
19. Where it is sought to make an improvement to the lease the tribunal is of the opinion that the matter should be dealt with under section 37 and that agreement of a majority of the lessees should be obtained to the variation.

20 Accordingly whilst the tribunal would accept that the amendment proposed is reasonable it does not in the view of the tribunal fall within the section 35 condition which is designed to repair defects in leases rather than simply to affect improvements.

Chairman Judge P Leighton LLB

Date 30th August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,

- (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.